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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,297	09/30/2003	Emerson P. Jones	06878.114501	8191
32361	7590	09/20/2007		
GREENBERG TRAURIG, LLP			EXAMINER	
MET LIFE BUILDING				ALI, MOHAMED HATEM
200 PARK AVENUE			ART UNIT	PAPER NUMBER
NEW YORK, NY 10166			3693	
			NOTIFICATION DATE	DELIVERY MODE
			09/20/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/676,297	JONES ET AL.
	Examiner	Art Unit
	Mohamed H. Ali	3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 30 September 2003.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-10 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 30 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 7/20/2007.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.
2. **Claim 1** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**In claim 1**, at line 2 the citation, "a cost of a selected debt/equity ratio" renders the claim indefinite, as the ratio is only a number which alone cannot have any cost or value.

**In claims 7 and 9**, at lines 10 and 27, the citations, "each value of earnings per share is calculated at least in part using the formula  $EPS = DPS_0 + (Earnings_0 - N_0 \times DPS_0 - \text{Coupon}) / (N_0 + \Delta N_{eff})$  or  $EPS = \text{Dividend per share} + \text{retained EPS}$ " render the claims indefinite since the formula deals with  $\Delta N_{eff}$ , the input change and other data related to abstract quantities of cost/benefit/Risk tradeoff (specification page 30, lines [19-23]).

Proper clarifications are required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2), of such treaty in the English language.

4. **Claims 1-10** are rejected under 35 U.S.C. 102(e) as being anticipated by *Ichihari et al* (US 2003/0046203 A1).

As per claim 1, *Ichihari et al* discloses a method implemented by a programmed computer system for characterizing a capital structure of an entity (see para 0090-0092 and Fig.13; via computer system and enterprise as entity [para 0033]) in connection with a cost of a selected debt/equity ratio relative to a risk associated with the selected debt/equity ratio, which method comprises the steps of: iteratively changing a value of a debt/equity ratio associated with the entity (see para 0062-0063; via an enterprise makes loss as a result of volatility of earnings by a business risk) ;

calculating values of earnings per share associated with the entity based at least in part upon the iteratively changed values of the debt/equity ratio associated with the entity (see para 0081; via step **108** in Fig.1)

calculating values of earnings per share risk associated with the entity based at least in part upon the iteratively changed values of the debt/equity ratio associated with the entity (see para 0061; via step **106** in Fig.1); and

recording the calculated earnings per share values associated with the entity and the

calculated earnings per share risk values associated with the entity (see para 0091 and 0095; via all calculated data are recorded and stored in data files **180-190**).

**As per claim 2,** *Ichihari* discloses that the entity is a public corporation (see para 0033; via to measure performance of an entire enterprise, public entity).

**As per claim 3,** *Ichihari* discloses, at least one of the calculated earnings per share values and the calculated earnings per share risk values is applied to a financial presentation relating to at least one of a balance sheet and an earnings per share metric (see para 0091 and 0100; via earning per share [as MEVA] calculation and storing and display inherently data may be shown in spreadsheet for presentation).

**As per claim 4,** *Ichihari* discloses that the iterations and calculations are carried out at least in part using a Monte Carlo simulation (see par 0089; via performing the Monte Carlo Simulation).

**As per claim 5,** *Ichihari* discloses that the outputted calculated earnings per share values and the outputted calculated earnings per share risk values are plotted against one another (see paras 0059, 0060 and Fig.5).

**As per claim 6,** *Ichihari* discloses that the plot of calculated earnings per share

values versus calculated earnings per share risk values is credit adjusted (see para 0052-0054 and Fig.3).

**As per claims 7 and 9, Ichihari discloses the steps further comprising:**

inputting data associated with the entity including a number of common shares outstanding, a value of earnings, a value of dividends per share, a change in the effective number of common shares outstanding, which change in the effective number of common shares outstanding reflects the possibility, based upon an economically reasonable analysis in light of market conditions, of conversion of a convertible security; and a value of coupon payments;

wherein each value of earnings per share is calculated at least in part using the formula

$$\text{EPS} = \text{DPS}_0 + (\text{Earnings}_0 - N_0 \times \text{DPS}_0 - \text{Coupon}) / N_0 + \Delta N_{\text{eff}}$$

wherein  $\text{Earnings}_0$  equals the input value of earnings,  $N_0$  equals the input number of common shares outstanding,  $\text{DPS}_0$  equals the input value of dividends per share,  $\text{Coupon}$  equals the input value of coupon payments, and  $\Delta N_{\text{eff}}$  equals the input change in the effective number of common shares outstanding (see para 0033-0039; via identical expression of EPS or earnings of an enterprise with shares or Market efficiency value added = Net operating profit after Tax- Cost of Capital)

**As per claims 8 and 10, Ichihari discloses that the economically reasonable**

analysis in light of market conditions takes into account a conversion premium associated with the convertible security (see para 0095-96; via analysis with historical and simulation methods and market condition with ROI data).

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Slyke et al* (US 2002/0042770 A1) discloses Liquid Insurance Contracts.

*Makivic* (6,061,662) discloses the valuation of derivative financial instruments.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohamed H. Ali whose telephone number is 571-270-3021. The examiner can normally be reached on 8.00 to 5.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mohamed H Ali  
Examiner  
Art Unit 3693

MA

*James A. Kramer* 9-17-07  
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